IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.958 of 2002
Date of decision: January 30, 2007.

Tarsem Garg

...**Petitioner(s)**

v.

The Managing Director, Fiat Auto Ltd. & Ors.

...**Respondent(s)**

Present: Shri Raj Kumar Garg, Advocate for the petitioner.

Shri V.S. Rana, Advocate for respondent No.3.

Shri D.K. Singal, Advocate for respondents No.5 & 6.

Surya Kant, J. (Oral)

This criminal revision petition is directed against theorder dated 11.10.2001 passed by the Judicial Magistrate First Class, Chandigarh whereby a complaint under section 420 IPC filed by the petitioner has been dismissed at the pre-summoning stage after observing that by way of his preliminary evidence, the petitioner has failed to make out a *prima-facie* case under section 420 IPC against the respondents.

The petitioner purchased a Fiat Sieno car from the authorized dealer at Chandigarh. It is alleged that there was a manufacturing defect in the vehicle from the very inception and on the pretext of removing the said defect, the vehicle was taken back by the dealer but was never returned to the petitioner after repair/removal of the defect. He also alleged that the car which was handed over to him when he purchased the same was a sub-standard car and was not in consonance with the model car shown to him or advertised by the respondents.

The learned Judicial Magistrate, however, dismissed the complaint after observing that no preliminary evidence was led by the petitioner to prove as to what was the model car shown to him or in the advertisement. In the absence of any proof of misrepresentation of a

definite fact, the learned Magistrate has observed that the allegation of defraud by cheating, cannot be entertained.

During the course of hearing, it is pointed by Learned Counsel for the respondents that the petitioner had also filed a complaint before the Chandigarh State Consumer Disputes Redressal Commission, however, his complaint has been dismissed by the said Commission vide order dated 7.10.2002 with a cost of Rs.6,000/-. While dismissing the complaint, it has been found, as a matter of fact, that the petitioner took his car to Jammu & Kashmir State where it met with an accident and the damaged vehicle was brought from the site of the accident by the authorized dealer at Chandigarh on its own. However, the possession of the repaired car could not be delivered to the petitioner as the same was hypothecated with the financiers, i.e. respondents No.5 and 6 and since the petitioner had failed to repay the loan instalments, the possession of their vehicle was taken over by the financiers in compliance to some order passed by the Madras High Court.

In this view of the matter, no case for interference by this Court is made out.

Dismissed.

January 30, 2007. [**Surya Kant**]
kadyan **Judge**